

1 The Honorable Mary Jo Heston
2 Chapter 7
3 Hearing Location: Tacoma Federal Courthouse
4 Union Station, Courtroom H, 1717 Pacific
5 Avenue, Ste 2100, Tacoma, WA 98402-3233
6 Hearing Date: January 4, 2018
7 Hearing Time: 9:00 a.m.
8 Response Date: December 28, 2017

9

10 UNITED STATES BANKRUPTCY COURT
11 WESTERN DISTRICT OF WASHINGTON

12 In re:

13 Case No.: 17-41711-MJH

14 Heather Ann Stewart

15 Chapter 7

16 Debtor

17 MOTION FOR RELIEF FROM STAY AND
18 MEMORANDUM IN SUPPORT THEREOF

19 COMES NOW, Seterus, Inc. as the authorized subservicer for Federal National Mortgage
20 Association ("Fannie Mae") ("Creditor") and moves the Court pursuant to 11 USC §362(d) for
21 an Order Terminating the Automatic Stay, allowing Creditor to proceed with any and all
22 contractual and statutory remedies incident to the interest held by virtue of the note and deed of
23 trust described below and attached as exhibits to this motion and memorandum.

24 **I. RELEVANT FACTS**

25 **A. The Property**

26 On or about March 1, 2007, Heather Stewart executed a note in favor of First Magnus
27 Financial Corporation, an Arizona Corporation in the original principal amount of \$133,600.00
28 ("Note"). The debt described by the Note is secured by a deed of trust ("Deed of Trust")
29 properly recorded and creating a lien against property commonly described as 8305 Cirque Drive
West Unit 5, University Place, WA 98467 (the "Property").

1 Creditor is the holder of the Note and thus has standing to enforce the Note pursuant to
2 RCW §62A.3-301. The Deed of Trust was pledged as incident to the Note and thus, as the
3 holder of the Note, Creditor also has the right to enforce the Deed of Trust that follows the note.
4

5 Subsequent to the execution of the Note and Deed of Trust, Debtors have filed for
6 protection under Chapter 7 of Title 11 of the United States Code.
7

8 Upon information and belief, no foreclosure sale is pending as of the date of this motion.
9

10 **B. The Debt**

11 As of the date of this motion, Debtor is due for the April 1, 2017 payment. The
12 approximate amount owed under the terms of the Note is \$138,092.05. This is an approximation
13 of the lien, including principal balance plus accrued interest, late charges, escrow shortages and
14 other fees and costs, as allowed under the terms of the Deed of Trust. This estimate is accurate
15 as of the date provided to counsel for the Creditor and is intended only for the purposes of this
16 motion. This amount cannot be relied upon for any other purposes, including payoff of the
17 secured debt. A complete, date specific and itemized payoff figure may be obtained from
18 Movant upon written request to counsel for Creditor.
19

20 In addition to the debt owed to creditor there is a lien in favor of Real Time Resolutions
21 in the amount of \$30,633.00.
22

23 **C. The Value of the Property**
24

25 The value of the Property as represented in Debtor's sworn schedules is \$120,950.00.
26

1 **II. ARGUMENT AND AUTHORITY**

2 **A. Standing**

3 To prosecute a motion for relief from the automatic stay as to enforcement of a note and
4 deed, a movant must establish that it has an interest in the note, either as a holder, or as a party
5 entitled to enforce the note. See *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011). In the case at bar,
6 the declaration and exhibits supporting the motion establish that Creditor is the holder of the
7 Note and thus has standing to prosecute the present motion.

8

9 **B. Basis for Relief from Stay**

10 Under 11 U.S.C. 362(d)(2), on request of a party in interest, the court *shall* grant relief from
11 stay if there is no equity in the property and the property is not necessary for an effective
12 reorganization. In the case at bar, after consideration of all liens against the Property including
13 the secured lien of Creditor, the Debtor's claimed exemptions against the Property, and the costs
14 of liquidation that would be associated with any sale of the Property, there is no equity for the
15 estate. Because the Debtor has filed for protection under the liquidation provisions of Chapter 7,
16 there is no reorganization and thus the Property cannot be argued as necessary for an effective
17 reorganization.

18

19 Under 11 U.S. C. 362(d)(1), on request of a party in interest, the court shall grant relief from
20 the stay for cause, including the lack of adequate protection of an interest in such property.
21 Adequate protection is lacking where there is an insufficient equity cushion in the subject
22 property. *In re Mellor*, 734 F.2d 1396 (9th Cir. 1984). In the case at bar, considering the value of
23 the Property against the amount owed to Creditor, there is no equity cushion and thus Creditor
24 lacks adequate protection and the stay should be terminated.

25

26 **III. RELIEF REQUESTED**

27 For the reasons stated above, Creditor requests:

28 1. An Order Terminating the Automatic Stay.

1 2. Alternatively, for an Order requiring adequate protection of Movant's interest in
2 the Property.
3 3. For such other relief as the Court deems proper.

4 Dated: November 30, 2017

5 McCarthy & Holthus, LLP

6 /s/ Lance Olsen

7 Lance E. Olsen, Esq. WSBA# 25130

8 Joseph T. McCormick III, Esq. WSBA# 48883

9 Attorney for Movant

CERTIFICATE OF SERVICE

On 11/30/2017, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPPORTING THE MOTION AND DECLARATION** on the following individuals by electronic means through the Court's ECF program:

TRUSTEE
Kathryn A Ellis
kae@seanet.com

DEBTOR(S) COUNSEL
Dorothy A. Bartholomew
assistant@findbankruptcy.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Salvador Arroyo
Salvador Arroyo

On 11/30/2017, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPPORTING THE MOTION AND DECLARATION** on the following individuals by depositing true copies thereof in the United States mail, enclosed in a sealed envelope, with postage paid, addressed as follows:

DEBTOR

Heather Ann Stewart, 8305 Cirque Drive W. Unit 5, University Place, WA 98467

US TRUSTEE

700 Stewart St Ste 5103, Seattle, WA 98101

OTHER LIEN HOLDER(S)

Real Time Resolutions, Attn: Bankruptcy, PO Box 36655, Dallas, TX 75235

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Christian Aguilar
Christian Aguilar